

MICHAEL C. SNYDER
MARK D. STREED
DANIEL C. GUERRERO
JEFFERY P. OISTAD
ANTHONY J. NEMO
KONSTANDINOS NICKLOW
PAMELA J. SPAULDING
ANDREW L. DAVICK
GENEVIEVE M. ZIMMERMAN
JOSHUA M. TUCHSCHERER
ERIC M. PALMER

LAW OFFICES
MESHBESHER & SPENCE, LTD.
1616 PARK AVENUE
MINNEAPOLIS, MINNESOTA 55404
(612) 339-9121
FAX (612) 339-9188
www.meshbesher.com
REPLY TO MINNEAPOLIS OFFICE

ZACHARY C. BAUER
JAMES B. SHEEHY
LINDSEY A. CARPENTER
RACHEL N. SIMPSON
ASHLEIGH E. RASO
DEREK I. STEWART

OF COUNSEL
RALPH S. PALMER
REID G. RISCHMILLER

October 2, 2018

Via ECF

The Honorable Joan N. Erickson
District Judge, District of Minnesota
United States District Court
12W U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

The Honorable David T. Schultz
Magistrate Judge, District of Minnesota
United States District Court
9E U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Re: Axline v. 3M Co., et al. / Case No. 17-cv-511- JNE/DTS

Dear Judge Erickson and Judge Schultz:

Once again Defendants approach the Court through unsolicited letter, in violation of the local rules. If Defendants wish to bring a motion to amend the scheduling order currently in place, Defendants ought follow the FRCP and Local Rules for a formal Rule 16 motion, including a meet and confer. Defendants have failed to follow the rules in all respects. Accordingly, Plaintiffs object to both the substance and the procedure of Defendants approach to the Court.

Given Defendants' characterization of what has been "learned" across three cases, Plaintiffs submit that little if anything useful has been learned by the parties in Gareis, Hives, or Axline. Axline is a mutually nominated bellwether case that could be the subject of a proper and complete trial commencing December 3rd, but rather than face a trial on the science and the true state of corporate knowledge, Defendants have argued prejudice in allowing the very amendment that the Defendants offered even prior to the close of discovery in this matter. Despite Defendants' arguments to the contrary, Plaintiffs are routinely permitted to amend complaints under Ohio law to conform to the OPLA. See, e.g., *Greenway v. Kimberly-Clark Corp.*, 1:15-CV-1720, 2016 WL

The Honorable Joan N. Erickson

October 2, 2018

Page 2.

3460229, at *2 (N.D. Ohio June 24, 2016); Crisp v. Stryker Corp., 5:09-CV-02212, 2010 WL 2076796, at *3–4 (N.D. Ohio May 21, 2010). Plaintiffs submit Ms. Axline should be permitted to do so here, and will respectfully submit an objection to the Order pursuant to LR 72 on or before 10/10/18.

Respectfully submitted,



Genevieve M. Zimmerman, for Plaintiffs

cc: Counsel of record